

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

EMMETT L WILLIAMS,

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Plaintiff,

*

vs.

*

ST FRANCIS UROLOGY et al.,

*

CASE NO. 4:23-cv-25-CDL

Defendants.

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O R D E R

Plaintiff filed this action on February 14, 2023. Based upon the allegations in his Complaint, he asserts "medical negligence" claims against "St. Francis Urology" based on the alleged negligence of Dr. Killorin and against "the Veterans Administration" based on the alleged negligence of Dr. Daniels. Compl. ¶ 1, ECF No. 1. Although the caption of his Complaint also lists "Greater Columbus Health Foundation" as a defendant, the Complaint contains no factual allegations supporting any claim against that Defendant. *Id.* at 1. More than 90 days have passed, and Plaintiff has not filed a proof of service showing that Defendant Greater Columbus Health Foundation has been served with a copy of the summons and complaint. Given the lack of factual allegations against this Defendant, the Court dismisses Plaintiff's Complaint against "Greater Columbus Health Foundation" without prejudice. The Court has reviewed the executed returns of service as to the two other Defendants and finds them

lacking. The Complaint alleges that Dr. Killorin is the registered agent for "St. Francis Urology," yet he has not been served as registered agent or in his individual capacity. *Id.* The record does not indicate whether "St. Francis Urology" is even a legal entity capable of being sued, and if it is, it does not appear that the person who was served was the suitable person for service to be made upon. Regarding Plaintiff's claims against the Veterans Administration, the record does not indicate that it is a proper defendant or that it has been properly served consistent with the rules regarding service on a federal agency. Under Federal Rule of Civil Procedure 4(m), if a defendant is not served within 90 days after the complaint is filed, the court, after notice to the plaintiff, must dismiss the action without prejudice against the defendant or order that service be made within a specified time. Accordingly, Plaintiff is ordered to provide additional evidence to show that "St. Francis Urology" is a legal entity capable of being sued and that it has been properly served. Furthermore, Plaintiff shall provide additional evidence to demonstrate that he has properly served his Complaint on the proper party regarding his claim against the Veterans Administration. Plaintiff shall submit this evidence by September 15, 2023. The Court also observes that no basis for federal subject matter jurisdiction can be ascertained from the allegations in the Complaint. Plaintiff shall amend his complaint by September 15, 2023 to include such allegations. Failure to amend

the complaint and provide sufficient evidence as to service by September 15, 2023 will result in the dismissal of Plaintiff's Complaint against these Defendants without prejudice.

IT IS SO ORDERED, this 23rd day of August, 2023.

S/Clay D. Land

CLAY D. LAND

U.S. DISTRICT COURT JUDGE

MIDDLE DISTRICT OF GEORGIA